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ABSTRACT

This report summarizes memoranda issued by the Department of Education's Office for Civil Rights to clarify policy applications of Title IX (Education Amendments of 1972), Title VI (Civil Rights Act of 1964), and Section 504 of the Rehabilitation Act of 1973. Cases discussed in reference to Title IX concern discrimination in athletic programs, sex bias in the Comprehensive Test of Basic Skills, and the provision of child care by a college for the children of female students. Cases discussed in reference to Title VI concern counseling for limited English speaking students, possible discrimination in counseling leading to disproportionate minority representation in vocational education programs, and college or university quotas for foreign students. Finally, cases discussed in reference to Section 504 concern evidence for discrimination, obligations of school districts to institutionalized handicapped children, physical accessibility requirements, overlapping legislation requiring provision of interpreters or auxiliary aids for the hearing impaired, postsecondary institution housing for the disabled, and participation in a university food service program by handicapped students with special dietary needs. (GC)

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DIGEST OF SIGNIFICANT CASE-RELATED MEMORANDA

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JANUARY THROUGH JUNE 1981

VOLUME III NUMBER 1

*Litigation, Enforcement and Policy Service reviews cases and responds to inquiries from within the Office for Civil Rights (OCR), Department of Education, to ensure that compliance determinations are consistent with established policy. This report consists of summaries of significant case-related policy clarification memoranda issued during the months of January through June 1981.

UD 022 306

Table of Contents for Volume III Number 1

Issue	Page
Title IX	
Is it discriminatory for a recipient to offer different events and/or more events to students of one sex for track, swimming, gymnastics, fencing and other sports featuring individual events?	1
Is the Comprehensive Test of Basic Skills (CTBS) "sex-biased" and, if so, does it result in discrimination against students of one sex?	3
Although the Title IX regulation does not mention the provision of child care programs, does OCR have jurisdiction to investigate a complaint alleging that a college eliminated a child care program with an intent to discriminate against female students who are parents and that the effect of such action resulted in discrimination against female students?	4
Title VI	
What measures must a school district use to ensure that it provides in its counseling process for effective communication with students who have limited-English proficiency?	5
What data indicate disproportionate enrollment of minority students in vocational education programs to an extent that a recipient would be required to ensure that the disproportio does not result from discrimination in counseling activities?	6
Does Title VI permit a postsecondary institution to 1) establish an admissions quota for non-U.S. citizens as a whole; or 2) establish an admissions quota for non-U.S. citizens from a specific foreign country or foreign geographic region?.	9
Section 504	
What is evidence of a "pattern or practice" of discrimination which would prompt OCR to investigate and review the results of individual placement decisions?	10

What are the obligations of school districts to handicapped children residing in State institutions located within the boundaries of the school district? 12

Is it a violation of the program accessibility provisions of the Section 504 regulation if the science building of a recipient postsecondary institution does not have any lowered tables in the laboratory but is otherwise accessible? 14

Is a state vocational rehabilitation (VR) agency precluded by the "similar benefits" provision of Title I of the Rehabilitation Act of 1973 from paying for interpreter services for a hearing-impaired client, otherwise eligible for such services, who is enrolled in a recipient post-secondary educational institution, because the educational institution is required by the Section 504 regulation to ensure the provision of auxilary aids? 15

When a recipient postsecondary institution offers, among various types of housing accommodations, housing with double or single air conditioned rooms and private bathrooms to students, but the same choice of housing accommodations with air conditioning and private bathrooms is not accessible to students in wheelchairs, what types of housing must be accessible in order for the institution to comply with the Section 504 regulation? 17

What must a university do to accommodate the special dietary needs of a qualified handicapped student when it requires all students to participate in its food service program?. 19

Title IX
of the Education Amendments of 1972

Issue:

Is it discriminatory for a recipient to offer different events and/or more events to students of one sex for track, swimming, gymnastics, fencing and other sports featuring individual events?

Facts:

OCR received a complaint that the Kentucky High School Athletic Association (KHSAA), admittedly an agent of the recipient State Department of Education, did not offer the same events or as many events to girls as it offered to boys in the sports of track, gymnastics, cross country and fencing. The KHSAA offered three fencing events to boys while only one was open to girls; boys could compete in six gymnastics events while girls competed in four; boys ran three miles in cross country while girls ran two, and three of the track events available to boys were not available to girls. The KHSAA had a standard policy of sanctioning new sports for State competition at the request of 25 percent of its members which was determined to be nondiscriminatory. Also, the KHSAA listed sports in its handbook as being for boys or girls.

Testimonial evidence indicated that there were no known requests from students or school personnel for any changes in events offered.

Decision:

In the absence of expressed interest to the contrary, offering different events or a different number of events to boys and girls is permitted under section 106.41(c)(i). Sports may be designated as being for boys or for girls as permitted under section 106.41(b) regarding separate teams. Furthermore, certain events may be treated as separate sports under section 106.41(b). For example, girls' track does not offer a pole-vault event. If a female student wishes to try out for the boys' pole-vault, she must be permitted to do so if athletics opportunities for girls were previously limited at her school because pole-vaulting is not a contact sport. The school would be required to offer a girls' pole-vault only when the interests and abilities of students warranted such action. The KHSAA would be obliged by its nondiscriminatory policy to sanction girls' pole-vaulting for State competition when 25 percent of the schools in the Association requested it. Also, the KHSAA could not prohibit a female student from participating in the boys' pole-vault event in State competition if she had been selected by her school to represent it in that event.

Authority:

This decision is based on the following sections of the Title IX regulation:

Section 106.41 Athletics:

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

OCR Memorandum of May 7, 1981

Title IX
of the Education Amendments of 1972

Issue:

Is the Comprehensive Test of Basic Skills (CTBS) "sex-biased" and, if so, does it result in discrimination against students of one sex?

Facts:

OCR received a complaint that raised the issue of whether the Comprehensive Test of Basic Skills (CTBS) was "sex-biased" and, if so, whether the test resulted in discrimination against female students. The complainant had cited test items from an early version of the CTBS which appeared offensive. The CTBS is periodically rewritten and revised in a different "form." The publisher acknowledges that new forms are screened for race and gender bias. Such acknowledgement is absent in descriptions of previous forms of the CTBS. OCR investigation revealed that there is substantial disagreement among experts in defining test bias and evaluating testing instruments for bias.

Decision:

Given this context of disagreement and controversy, OCR is not in a position to perform a technical analysis of the CTBS for bias. While some test items may be offensive, the harm caused by exposure to such test items is not well established. The score differences between males and females in the school district need to be established, as well as the consequences of resulting score differences (e.g., how the test results are used by the school district to alter education practices or programs). In the absence of any evidence that the offensive items produce lower scores for females and that lower scores lead to different educational treatment for males and females, OCR is unable to make a finding of discrimination.

Authority:

This decision is based on the following section of the Title IX regulation:

Section 106.21 Admission.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

Title IX
of the Education Amendments of 1972

Issue:

Although the Title IX regulation does not mention the provision of child care programs, does OCR have jurisdiction to investigate a complaint alleging that a college eliminated a child care program with an intent to discriminate against female students who are parents and that the effect of such action resulted in discrimination against female students?

Facts:

A public college operated a child care center for one year. The center was primarily a laboratory for Early Childhood Education and other courses. Following a reduction in appropriations by the legislature, the board of trustees of the college reviewed all non-income producing programs and services, including the center, and voted to eliminate the child care center. For two years the college took no action to reestablish the center. The complainants alleged that the college's actions in closing the center and failing to reestablish it had a discriminatory effect on female students who are parents and that the college took these actions with the intent to reduce the number of female students at the college.

Decision:

Although the Title IX regulation does not require postsecondary institutions to provide campus child care programs per se, it does generally prohibit discrimination on the basis of sex. For this reason, if an institution took any action with respect to a child care center that was intended to result in exclusion from participation in the education program or denial of benefits on the basis of sex and this action resulted in exclusion from participation or denial of benefits on the basis of sex, this action would constitute a violation of section 106.31(a). Therefore, OCR had jurisdiction to investigate.

Authority:

This decision is based on the following section of the Title IX regulation: 34 C.F.R. 106.31(a).

OCR Memorandum of May 20, 1981.

Issue:

What measures must a school district use to ensure that it provides in its counseling process for effective communication with students who have limited-English proficiency?

Facts:

A school district offers a number of vocational courses and programs in its 11 high schools, most of which have enrollments that closely reflect the racial/ethnic composition of the district's overall high school enrollment, roughly 86 percent Anglo, three percent Asian or Pacific Islander, 10 percent Hispanic, and one percent black. In one of its high schools, however, Hispanics constitute approximately one-third of its student body. The school district has bilingual counselors at this high school and at one other. At other schools, students who are bilingual are asked to serve as interpreters in counseling sessions for students with limited or no English proficiency.

Decision:

No specific means are required to ensure that counselors can communicate effectively with national origin minority students with limited English proficiency. Absent evidence that the use of student interpreters did not result in effective communication with students requiring translation, or that student interpreters were not always available when needed, the use of student interpreters must be considered sufficient.

Authority:

The decision was based on the following sections of the Title VI regulation.

Section 100.3(b) Specific discriminatory actions prohibited.

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provide under the program;

Appendix B — Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs;

V(D). Counseling of Students with limited English-speaking Ability or Hearing Impairments

Recipients must ensure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

OCR Memorandum of April 7, 1981

Title VI
of the Civil Rights Act of 1964

Issue:

What data indicate disproportionate enrollment of minority students in vocational education programs to an extent that a recipient would be required to ensure that the disproportion does not result from discrimination in counseling activities?

Facts:

A school district offered a number of vocational courses and programs in its comprehensive high schools. At some schools there appeared to be some slightly disproportionate enrollment of national origin minority students in certain vocational education courses. A statistical analysis (chi-square) of enrollment in vocational education courses in the entire district showed that national origin minority students were significantly under- or over-represented in several vocational education programs.

Decision:

In school districts that offer similar vocational programs in several comprehensive high schools, the need for a recipient to ensure that there is no discrimination in its counseling practices is indicated by data for an individual school showing substantially disproportionate enrollment in one or more of its vocational courses. Individual school data rather than district-wide data should constitute the basis upon which the need for further measures by a recipient is determined for several reasons, namely:

a. Counselors generally work on a school-wide basis rather than a district-wide basis. Consequently, they would not be aware of the district-wide picture.

b. Vocational course enrollment may be proportionate on a district-wide basis, reflecting off-setting disproportionate enrollments at member schools.

c. Conversely, cumulative enrollment data could indicate substantially disproportionate enrollments in a course without disproportionate enrollments sufficient to trigger an internal review of counseling practices at any one school.

d. Counseling practices may vary from school-to-school.

To determine if there is sufficient disproportion in enrollments in vocational education programs to warrant a review by the district to ensure that the disproportion does not result from discrimination in its counseling practices, OCR should conduct a two-pronged analysis. The initial test should be a plus-or-minus 20 percent of the racial/ethnic and male/female mix of the individual school. For those courses that appear substantially disproportionate as a result of the plus-or-minus 20 percent test, a further statistical measure, such as a "t-test" of the differences in proportion, should be applied to determine if the disproportion is statistically significant. Use of the statistical measure in combination with the plus-or minus 20 percent measure will prevent identification of courses with relatively small enrollments in which the addition or substraction of very few students of a particular racial or ethnic groups would change the disproportionate identification.

In conducting a review that involves vocational education programs at several comprehensive high schools which have varying proportions of minority students, OCR should obtain data on the vocational offerings at each school to determine if the offerings are comparable, comparing in particular the offerings at schools with high and low concentrations of minority students. Of course the attendance zone policies of the district must also be considered in this analysis.

Where similar courses are offered at several schools with disproportionate minority enrollment in a course at one school and proportionate enrollment in the same course at another school, OCR should examine the counseling process at each school to determine whether the difference in enrollment in the courses at the two schools is attributable to different counseling techniques or procedures.

In analyzing data pertaining to enrollment in the vocational education courses offered by each school, it would be best to analyze data over a 3 to 5 year period rather than on a one-time basis in order to determine whether there is a consistent enrollment pattern. If there are differences from year to year or school to school, OCR should determine whether those differences could be attributed to differences in counseling and recruitment activities.

Authority:

The decision was based on the following sections of the Title VI regulation:

Section 100.3(b) Specific discriminatory actions prohibited.

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(1) Deny an individual any service, financial aid, or other benefit, provided under the program;

Appendix B — Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap in Vocational Education Programs.

V(B). Counseling and Prospects for Success

Recipients that operate Vocational Education programs must ensure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, recipients must take steps to ensure that the disproportion does not result from unlawful discrimination in counseling activities.

OCR Memorandum of April 7, 1981

Title VI
of the Civil Rights Act of 1964

Issue:

Does Title VI permit a postsecondary institution to 1) establish an admissions quota for non-U.S. citizens as a whole; or 2) establish an admissions quota for non-U.S. citizens from a specific foreign country or foreign geographic region?

Facts:

The issues summarized above were raised in theoretical terms by a college official.

Decision:

To the extent that admissions quotas are based on citizenship alone, there is no violation of Title VI because the statute does not prohibit discrimination on the basis of citizenship. Where, however, the particular national origin(s) of the non-U.S. citizens play a role in establishing the quota, Title VI would be violated. This would be the case if the quota is established: (1) in terms of a specific country or a specific geographic area; or (2) in terms of non-U.S. citizens as a whole, if done for the purpose of excluding persons from a particular country or area. In this latter case, the use of the classification of non-citizen would function as a pretext for accomplishing the prohibited purpose of discriminating against persons of particular national origins and would be prohibited. These prohibited quotas violate Title VI because they use a forbidden basis, national origin, to restrict admissions. (OCR also advised the institution to consult legal counsel and the U.S. Department of Justice as to the constitutionality of such quotas.)

Authority:

This analysis was based on 34 C.F.R. Sections 100.3(a) adn (b)(1)(v).

OCR letter dated February 24, 1981.

Section 504 of the
Rehabilitation Act of 1973

Issue:

What is evidence of a "pattern or practice" of discrimination which would prompt OCR to investigate and review the result of individual placement decisions?

Facts:

A complaint was filed on behalf of a severely retarded student alleging that the student had not been placed in an integrated setting to receive his education. The complaint further alleged that the complainant was placed in a center for such children without regard to his unique needs or abilities. Following an investigation, regional staff concluded that the school district had utilized a lawful process in evaluating and placing the child. Having met the process requirements of the Section 504 regulation, regional staff declined to examine the correctness of the school district's placement decision. The school district was to be found in compliance.

Almost concurrently, the Office for Special Education (OSE) issued a lengthy report which detailed a series of violations in the subject State. Among them was the assertion that the centers of the type in which the complainant was being educated were part of a statewide system of such centers, whose existence was utilized to deny severely handicapped students an opportunity to recieve an education with nonhandicapped peers. Regional staff was requested to reopen the investigation of the individual complaint.

Decision:

When advised of the findings made by OSE, regional staff expanded the scope of the inquiry it had made on the individual complaint. In addition to determining whether the process requirements had been met with regard to the complainant, regional staff now investigated whether the center was utilized by the school district in a way that deprived the complainant and other severely handicapped children of an opportunity to be educated with nonhandicapped students.

Authority:

This decision is an interpretation of the following provisions of the Section 504 regulation:

Section 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person.

Appendix A - Analysis of Final Regulation

Subpart D - Preschool, Elementary, and Secondary Education

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of this subpart (concerning identification and location, evaulation and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a practice of discriminatory placements or education.

OCR Memorandum of May 14, 1981

Section 504 of the
Rehabilitation Act of 1973

Issue:

What are the obligations of school districts to handicapped children residing in State institutions located within the boundaries of the school district?

Facts:

The complainant, a school-age child, was placed by his parents in a State operated facility for emotionally disturbed children. The parents alleged that although the child was being treated and educated at the State facility, the fact that the facility was located "in" a local school district imposed an obligation on the part of that school district to ensure that the complainant received a free and appropriate education at the State facility.

Decision:

OCR determined that the Section 504 regulation imposes continuing financial and programmatic obligations on school districts only as to children whom they have placed or referred for educational programs. Although the complainant while residing at the State facility necessarily resided "in" a local school district as well, since the school district neither placed nor referred the complainant to the State facility, it had no obligation either to pay some of the charges nor ensure that the complainant was otherwise receiving an appropriate education. Moreover, OCR determined that the school district in which the State facility was located had no obligation to identify and locate the handicapped children in the State facility as being in need of special education, since those children were already receiving a public educaiton.

Authority:

The decision interprets Sections 104.32 and 104.33(a) of the Department's Section 504 regulation and also involves the explanatory material found in paragraph 23, Appendix A.

Section 104.32 Location and Notification

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Section 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or

secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

Appendix A - Analysis of the Final Regulation.

23. Free appropriate public education.

Under 104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word "in" encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains finacially responsible for the child whether or not the other program is operated by another recipient or educational agency. Moreover, recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another perosn's or entity's failure to assume financial responsibility.

OCR Memorandum of June 11, 1981

Section 504
of the Rehabilitation Act of 1973

Issue:

Is it a violation of the program accessibility provisions of the Section 504 regulation if the science building of a recipient post-secondary institution does not have any lowered tables in the laboratory but is otherwise accessible?

Facts:

A compliance review determined that a recipient's Science Technology Building, which houses all science classes and laboratories, is accessible, but it does not provide any lowered laboratory tables. There was no indication that any student confined to a wheelchair had been excluded from effective participation in any science laboratory program.

Decision:

Pursuant to Section 104.22(b), the assignment of an aide to a handicapped student to compensate for an inaccessible laboratory table would meet the program accessibility requirements of the Section 504 regulation. In this fact situation, a recipient would be in compliance with the program accessibility requirements if it (1) has a procedure, such as the assignment of an aide, to compensate for the inaccessible tables, thereby ensuring that no qualified handicapped person is denied participation in the science program and (2) provides notice as to the availability of such procedure(s) as required by section 104.22(f). Where such an alternative is used to achieve program accessibility, it is not appropriate to find the recipient in violation of the program accessibility requirements of the Section 504 regulation because it fails to provide lowered laboratory tables.

Authority:

This decision is an interpretation of the following sections of the Section 504 regulation: 34 C.F.R. 104.21, 104.22(b) and 104.22(f).

OCR Memorandum of June 30, 1981.

Section 504
of the Rehabilitation Act of 1973

Issue:

Is a state vocational rehabilitation (VR) agency precluded by the "similar benefits" provision*/ of Title I of the Rehabilitation Act of 1973 from paying for interpreter services for a hearing-impaired client, otherwise eligible for such services, who is enrolled in a recipient postsecondary educational institution, because the educational institution is required by the Section 504 regulation to ensure the provision of auxiliary aids?

Facts:

A hearing-impaired student enrolled in a postsecondary educational program requires the services of a sign language interpreter to participate in and benefit from the classroom portion of the academic program. The student is enrolled in the regular program, not a program specifically oriented toward providing services to handicapped persons with support services such as auxiliary aids provided as part of the program. The student receives assistance from the VR agency for his tuition, room, board and books. The VR agency's responsibility to provide services, such as interpreter services, is subject to a statutory requirement, popularly known as the "similar benefits" provision, that it provide vocational rehabilitation services only". . . after full consideration of eligibility for similar benefits under any other program . . . ." The VR agency contends that this "similar benefits" provision absolutely precludes it from providing interpreter services to

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*/ The "similar benefits" provision is actually comprised of three requirements in the Rehabilitation Act, sections 101(a)(8), 101(a)(12) and 103(a)(3), codified at 29 U.S.C. §§721(a)(8), 721(a)(12), and 723(a) respectively. Briefly, subsections 101(a)(8) and (a)(12) require that the State plan necessary to receive Federal financial assistance provide: (1) for "full consideration of eligibility for similar benefits under any other program," and (2) for maximum utilization of "public or other vocational or technical training facilities or other appropriate resources in the community." Section 103(a)(3) excludes from VR services, for which VR clients are eligible when attending colleges, any grant assistance obtainable "from other sources."

its handicapped clients who are enrolled in recipient postsecondary institutions because the VR agency construes the recipient's obligation under the Section 504 regulation to provide auxiliary aids as causing the educational program to be a "similar benefits program." The recipient postsecondary educational institution contends that its obligation under Section 504 to provide auxiliary aids to qualified handicapped students does not make its program a "similar benefits program." For this reason the postsecondary institution contends that the VR agency is not barred by the "similar benefits" provision from providing interpreter services to this student, who was otherwise eligible for these services from the VR agency, and that the VR agency should provide these services.

Decision:

A recipient postsecondary educational institution is not a "program" for providing auxiliary aids merely because it has an obligation under the Section 504 regulation not to discriminate against qualified handicapped students, which includes the provision of auxiliary aids. The term "program" in the "similar benefits" provision refers to vocational rehabilitation programs (programs that provide or pay for vocational rehabilitation services), not educational programs. The educational program in this case is not a "similar benefits" program. Therefore, the VR agency is not precluded by the "similar benefits" provision from providing interpreter services to the handicapped student, eligible for VR services, who is enrolled in a recipient postsecondary institution.

Authority:

This decision is based on 34 C.F.R. 104.44(d)(1) and (2) of the Section 504 regulation.

This decision is based also on Sections 103(a), 101(a)(8) and 101(a)(12) of Title I of the Rehabilitation Act of 1973.

OCR Memorandum of June 8, 1981 enclosing Office of the General Counsel Letter (to James P. Turner, Acting Assistant Attorney General, Civil Rights Division, DOJ, from Theodore Sky, Acting General Counsel, ED) of May 15, 1981.

Section 504
of the Rehabilitation Act of 1973

Issue:

When a recipient postsecondary institution offers, among various types of housing accommodations, housing with double or single air conditioned rooms and private bathrooms to students, but the same choice of housing accommodations with air conditioning and private bathrooms is not accessible to students in wheelchairs, what types of housing must be accessible in order for the institution to comply with the Section 504 regulation?

Facts:

A recipient college offers three types of housing to students: (1) housing with accessible air conditioned double room accommodations with common bathrooms; (2) housing with accessible single room accommodations with no air conditioning, but with private bathrooms; and (3) housing with air conditioned double room accommodations that are not accessible and that have private bathrooms. Single room accommodations cost students more than double room accommodations. There was no indication that any student confined to a wheelchair needed housing with both air conditioning and a private bathroom to accommodate his or her handicaps.

Decision:

Recipients that provide student housing are required to provide to handicapped students a choice of housing accommodations that, as a whole, is comparable to housing available to nonhandicapped students.

A recipient should not be found in violation of section 104.45(a) solely because it does not provide the same choice of air conditioned housing accommodations to students confined to wheelchairs as it provides to nonhandicapped students. However, given that this institution provides air conditioned rooms to some students, in the event that an individual handicapped student needed air conditioned accommodations due to his or her handicap (e.g., chronic respiratory problems), the institution would be required to house that student in air conditioned accommodations.

A recipient should be found in violation of section 104.45(a) if (1) it provides only single room accommodations with private bathrooms that are accessible, whereas it provides both single and double room accommodations with private bathrooms to students not confined to wheelchairs, and (2) the housing cost to a handicapped student, living in single room accommodations because he or she needs a private bathroom for reasons related to his or her handicap (e.g., students needing assistance), is higher than the student would pay for double room accommodations with a private bathroom. Acceptable remedies to such a violation would include either (1) an adjustment of the cost differential between single and double room accommodations with private bathrooms for individuals whose handicaps require accessible housing accommodations with private bathrooms, or (2) structural changes to make double room accommodations with private bathrooms accessible to persons in wheelchairs.

Authority:

This decision is based on the following section of the Section 504 regulation: 34 C.F.R. 104.45(a)

OCR Memorandum of June 30, 1981.

Section 504 of the
Rehabilitation Act of 1973

Issue:

What must a university do to accommodate the special dietary needs of a qualified handicapped student when it requires all students to participate in its food service program?

Facts:

The complainant's handicap, Myasthenia Gravis, is a disease that affects her muscular coordination. As a result, she must maintain a low sodium diet. The university, which requires all its students to participate in its food service program, i.e., to eat in its dining halls, did not provide the complainant with the appropriate diet.

Decision:

A university is not obligated under Section 504 to prepare special meals for disabled students. If a univeristy requires as a general policy that students must particpate in its food service program, however, it would have to provide the student with a special diet or waive the requirement that the student participate in the program. If the cost of the food service is borne by all students as part of an overall fee, a proportionate amount would have to be refunded to the student with special dietary needs if the waiver option is chosen.

Authority:

This decision was based on 34 C.F.R. 104.4(a); 104.4(b)(1)(i)-(iv).

OCR Memoranda of November 18, 1980 and January 26, 1981